

COMPLIANCE BOARD OPINION NO. 98-8

December 14, 1998

Mr. George Falter, Jr.

The Open Meetings Compliance Board has considered your complaint that the Board of County Commissioners of Garrett County violated the Open Meetings Act on the three occasions specified in your letter. In a timely response on behalf of the Board of County Commissioners, Gorman E. Getty, III, Esquire denied that the Act had been violated. We consider each situation separately below.

I

August 21, 1998

Your complaint points to a brief passage in a letter to the Governor from four members of the Legislature in which they referred to a meeting on Friday, August 21, at which the Allegany and Garrett County Commissioners, among others, were present. You complain that notice of this meeting was not provided.

According to Mr. Getty, “the Speaker of the House ... together with [three] representatives of the Western Maryland Delegation invited representatives of [Garrett] County and of Allegany County to meet at Frostburg State University. The purpose of the meeting was for the [legislators] to discuss, and to subsequently communicate to the Governor ..., matters relating to ... [transportation planning].” At the meeting, the legislators “discussed these issues and sought input from both Allegany and Garrett Counties.” This “was a meeting at which the County representatives, both Allegany and Garrett Counties, were invited guests of the Delegation.” Mr. Getty suggests that, because the meeting was initiated by the legislators and the Board of County Commissioners were merely invitees, the Board of County Commissioners was not responsible for any publicity about the meeting.

The Open Meetings Act, including its provision on notice of meetings, applies only when a “public body” holds a “meeting.” See §10-505 of the State Government Article. The Board of County Commissioners of Garrett County is, of course, a “public body.” §10-502(h). Moreover, the presence of a quorum ordinarily implies that the public body is

holding a meeting. *See* §10-502(g). This general rule has its exceptions, however. As we have observed in a number of opinions, members of a public body, even a quorum, may attend someone else's meeting without incurring the obligation to follow the Open Meetings Act, so long as the public body itself refrains from "the consideration or transaction of public business." §10-502(g). *See, e.g.,* Compliance Board Opinion No. 96-10 (1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 183, 185; Compliance Board Opinion No. 95-4 (1995), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 120, 121; Compliance Board Opinion No. 92-2 (1992), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 6, 7. *See generally* *Ajamian v. Montgomery Co.*, 99 Md. App. 665, 639 A.2d 157 (1994).

In this situation, the meeting was that of the Speaker and three other legislators. The members of the Board of County Commissioners were there as invitees. In a consultation of this kind, the legislators presumably were interested in the views of the senior elected officials in Garrett County. The legislators were not, however, seeking official action of the Board of County Commissioners as such and, we infer from Mr. Getty's letter, the Board did not engage in any part of the process of collective decision making. Under these circumstances, we conclude that the Open Meetings Act did not apply to the August 21 meeting.

II

August 26, 1998

Your complaint asserts that a "pre-meeting" was held to discuss highway issues prior to a scheduled tour in Garrett County by the Maryland Secretary of Transportation. Your complaint indicates that you "do not know exactly when or where the meeting was held but we did learn ... that such a meeting did, in fact, take place approximately ten days before the Secretary's [arrival]." You also indicate the belief that the Board of County Commissioners was present.

Mr. Getty states that the annual visit by the Secretary of Transportation to Western Maryland is routinely preceded by an organizational meeting between the staff of Allegany and Garrett Counties. "At the staff meeting on August 26, 1998, no elected officials attended." Those who attended were public works, planning, and transportation officials from the two counties and the State.

The Open Meetings Act did not apply to this meeting, because no “public body” was present. The Act does not apply to a staff meeting of this kind.

III

September 18, 1998

The last item in your complaint refers to a meeting on September 18, 1998 “held in the Garrett County Board of Commissioners Hearing Room to discuss highway/road projects. In attendance were the Garrett County Board of Commissioners, the Secretary of Transportation, Senator John Hafer, Delegate George Edwards and others. To our knowledge this meeting was never publicized. We later learned that this particular meeting had been scheduled for several months before it actually took place.” Mr. Getty confirmed that this meeting, held in connection with the Secretary of Transportation’s annual tour, did include the Board of County Commissioners of Garrett County. Mr. Getty points out that the meeting was open to the public and, indeed, you and other members of the public were present. Mr. Getty does not suggest that the meeting was anything other than a meeting of the Board of County Commissioners.

The issue, therefore, is not whether the meeting was conducted in accordance with the Act’s general mandate that meetings of public bodies be open to the public. Evidently, it was. The Act also provides, however, that notice of a meeting is to be provided to the public. This obligation is imposed on the public body itself: “Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.” §10-506(a). We infer from Mr. Getty’s letter that the Board of County Commissioners did not itself provide advance notice of the September 18 meeting; rather, the Secretary of Transportation did so: “It is obvious that this meeting was publicized sufficiently to apprise the Complainants of Secretary Winstead’s visit. The Public Relations Officer from the Secretary’s Office indicated to those in attendance that the meeting had, in fact, been publicized by a press release issued by the Secretary’s office on Monday preceding the meeting.”

The Act allows a public body to give notice “by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part.” §10-506(c)(2). While technically the Board of County Commissioners was itself responsible for seeing to it that notice was provided, as a practical matter a press release about the meeting from the Secretary of Transportation was sure to reach representatives of the news media who cover Garrett County affairs. Indeed,

they would have been the primary audience for the press release. Therefore, the Compliance Board concludes that there was substantial compliance with the notice provision of the Act.

OPEN MEETINGS COMPLIANCE BOARD

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